any way connected with the American corporation, which has the same or similar name, operating in Eire and the United Kingdom — certainly it was operating there at the material time when the dispute in that case arose.

For the reasons I have given, it is clear that the direction of the registrar cannot stand and has to be quashed. The same applies to the minister's decision dismissing the appeal from the registrar's decision. It is not necessary for me to go on to consider the second ground on which the applicant seeks to impugn the direction of the registrar; that turns on the true construction of the term 'any corporation' in s 11 of the Business Registration Act 1973, ie whether 'any corporation' includes a corporation incorporated abroad and not carrying on business in Singapore.

In the result, I allow this application. I make the order of certiorari as prayed for in the notice of motion. I also award costs to the applicant.

Application allowed.

Solicitors: *NS Kang.*

Reported by *S Surenthiraraj*

Goh Koon Suan v Heng Gek Kiau & Ors

HIGH COURT (SINGAPORE) — SUIT NO 1640 OF 1989
YONG PUNG HOW CJ
14 DECEMBER 1990

Trusts and Trustees — Constructive trustees — Solicitor's knowledge of dispute over beneficial ownership of property — Whether solicitors liable as constructive trustees

Civil Procedure — Statement of claim — Application to strike out — Proceedings vexatious and an abuse of the process of the court — Rules of the Supreme Court 1970, O 18 r 19

The first defendant was the registered owner of a property known as 2 Suffolk Road, #06-03 Suffolk Apartment, Singapore 1130 ('the property'). The plaintiff paid almost the entire purchase price of the property. The plaintiff was also a donee under a power of attorney given by the first defendant. Acting under the power of attorney the plaintiff entered into an agreement for the sale of the property which was to be completed on or before 20 July 1989. On 18 July 1989 the first defendant instructed a law firm ('the firm'), of which the second, third, fourth and fifth defendants were partners, to revoke the plaintiff's power of attorney and take over the conduct of the sale. The firm wrote to the plaintiff's solicitors, Hilborne & Co ('Hilborne'), revoking the power of attorney and in a letter of 22 July 1989 offered to 'hold the sale proceeds as stakeholder pending the resolution of the rights of the respective parties'. Later in the same day the firm, taking the first defendant's instructions that the first defendant was the legal and beneficial owner and that Hilborne's client, the plaintiff, had no interest in the property whatsoever, withdrew their offer to hold the proceeds as stakeholder.

On 26 July 1989 Hilborne, at the request of the firm and on the firm's undertaking to pay legal costs incurred by the plaintiff, released the papers relating to the matter and the 10% deposit of the purchase price to the firm. The sale was completed on 28 July 1989 and the sale proceeds released to the first defendant.

On 31 August 1989, the plaintiff issued a writ claiming that the first defendant was a trustee of the property for the plaintiff and that the second to fifth defendants were constructive trustees for the plaintiff in respect of the property and the sale proceeds.

On 30 October 1989 the second to fifth defendants successfully applied for the writ of summons and the statement of claim to be struck out on the ground that the proceeds were vexatious or alternatively that they were otherwise an abuse of the process of the court. The plaintiff appealed to the judge-in-chambers contending:

(1) The firm was aware that there was a dispute of sufficient gravity over the beneficial ownership of the property. The firm as potential constructive trustee were not entitled to allow their client's instructions to supersede their initial decision to hold the proceeds of sale as stakeholder.

(2) The firm had not shown that the plaintiff's claim was vexatious or an abuse of process since they had not questioned the plaintiff's good faith in their affidavits.

(3) The law regarding the liability of a stranger who became involved in the periphery of a breach of trust is a subject of controversy and this question cannot be dealt with summarily under O 18 r 19.

Held, dismissing the plaintiff's appeal:

(1) The firm was taking instructions from their client, the first defendant, and were only responsible to her. Their searches had confirmed that their client was the registered owner of the property and it was not for them to query her right to it or take steps to call in question that right. The firm never acted for the plaintiff and there was no evidence from which it could be inferred that the firm had become constructive trustees for and on behalf of the plaintiff.

(2) A proceeding is vexatious when the party bringing it is not acting bona fide and merely wishes to annoy or embarrass his opponent or when it is not calculated to lead to any practical result. Abuse of the process of the court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. In the instant case, the plaintiff's action against the second to fifth defendants was: (a) unsustainable and could not possibly hope to achieve any result; (b) not instituted in good faith as the plaintiff's solicitors knew that the second to fifth defendants had to hand over the 10% deposit and sale proceeds to their client; (c) in the opinion of the court, meant to embarrass the second to fifth defendants.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 7 of 91.]

Cases referred to

1 *Baden* v *Societe General du Commerce SA* [1983] BCLC 325 (refd)
2 *Re Montagu's Settlement Trusts* [1987] Ch 264 (refd)
3 *Lipkin Gorman* v *Karpnale* (1989) FLR 137 (refd)
4 *Williams & Humbert Ltd* v *W & H Trade Marks (Jersey) Ltd* [1986] 1 All ER 129 (refd)
5 *Frogmore Estate plc* v *Berger* (1989) 139 NLJ 1560 (refd)
6 *Barnes* v *Addy* (1874) 9 Ch App 244 (refd)
7 *Williams* v *Williams* (1881) 17 Ch D 437 (refd)
8 *Carl Zeiss Stiftung* v *Herbert Smith & Co (No 2)* [1969] 2 Ch 276 (folld)

Legislation referred to

Rules of the Supreme Court 1970 O 18 r 19

Kan Ting Chiu (*Ng Thin Wah* with him) for the plaintiff.
Goh Joon Seng for the second to fifth defendants.

Cur Adv Vult

Yong Pung How CJ: This was an appeal against the assistant registrar's order on 30 October 1989 striking out the plaintiff's statement of claim against the second, third, fourth and fifth defendants on the ground that *'the proceedings are vexatious or alternatively that they are otherwise an abuse of the process of the court'*.

Since about 27 October 1983 the first defendant, who is a Malaysian woman, has been registered as the owner of a flat ('the property') known as 2 Suffolk Road, #06-03 Suffolk Apartment, Singapore 1130. Almost the entire purchase price had been paid by the plaintiff, with whom she had cohabited for many years and by whom she had a son. As the Singapore immigration authorities later imposed restrictions on her travel from Malaysia to Singapore, she executed on 19 October 1988 a power of attorney in favour of the plaintiff empowering him, amongst other things, to manage and sell the property. Acting under the power of attorney, the plaintiff entered into an agreement for the sale of the property for $280,000, the sale to be completed on or before 20 July 1989.

The first defendant learnt about the proposed sale and on or about 18 July 1989, before the sale could be completed, she instructed a law firm ('the firm') of which the second, third, fourth and fifth defendants ('the second to fifth defendants') were partners to revoke the power of attorney and to take over the conduct of the sale. Accordingly, on 20 July 1989 the firm gave notice to the plaintiff and to Hilborne & Co ('Hilborne'), the plaintiff's solicitors, that the power of attorney had been revoked by the first defendant. The letter to Hilborne also put them on notice that the proceeds of sale should be paid by way of cashier's orders in favour of the first defendant and directed Hilborne on completion of the sale to forward the proceeds of sale to the firm. On 21 July 1989 the firm wrote again to Hilborne that they had been instructed to take over the conduct of the sale, and requested Hilborne to forward to them all papers relating to the sale on the usual undertaking to preserve their lien for costs.

On 21 July 1989 Hilborne replied that their client, the plaintiff, was claiming the proceeds of sale as the beneficial owner of the property, and that they were therefore unable to release the proceeds of sale as requested, and were holding the proceeds of sale under their client account until the matter could be resolved. On the same day, in reply, the firm wrote to Hilborne denying the plaintiff's claim, and requiring Hilborne to forward all papers relating to the sale and also the $28,000 being the 10% deposit of the purchase price which had already been received by Hilborne. On 22 July 1989 Hilborne wrote to the firm that they would hand over the papers and the 10% deposit on condition that the firm would hold the proceeds of sale as stakeholders pending the resolution of the plaintiff's claim.

On 24 July 1989 two letters were written by the firm to Hilborne. These two letters and Hilborne's reply to them of the same date are of particular relevance to one respect of the dispute between the parties in this appeal. The first of the firm's letters to Hilborne, which was in reply to Hilborne's letter of 22 July 1989, was faxed at 10.32am and is claimed by the plaintiff to support his claim against the second to fifth defendants. This letter reasserted their client, the first defendant's stand as the legal and beneficial of the property, but also said that, *'to enable completion of the sale and purchase and without prejudice to the aforesaid, we are willing to hold the sale proceeds as stakeholder pending the resolution of the rights of the respective parties to the abovementioned property'*. The firm therefore asked for all the papers and for a cheque for the 10% deposit of $28,000. Later the same day,

however, having taken their client's proper instructions on the matter, the firm wrote a second letter to Hilborne which was faxed at 3.13pm. This letter referred to Hilborne's letter of 22 July 1989 and to their own earlier letter of the same date. After reciting their client's instructions that she was the legal and beneficial owner and that Hilborne's client did not have any interest whatsoever in the property, the letter said *'in the circumstances, we shall not be holding the proceeds of sale as stakeholder'*. On receiving this, Hilborne wrote on the same day 24 July 1989 claiming on behalf of the plaintiff a beneficial interest in the proceeds of sale. They also claimed that they would want to hold the 10% deposit as stakeholders, and that they would not release the papers or the 10% deposit to the firm unless the firm was prepared to undertake to hold the proceeds of sale as stakeholders. They would also want the firm to undertake to pay the plaintiff's legal costs and expenses on the matter.

The next move in the sequence was that on 26 July 1989 the firm wrote to Hilborne undertaking to pay the plaintiff's legal costs and expenses if such costs and expenses were incurred by the plaintiff on the first defendant's behalf but not otherwise. In the same letter the firm gave Hilborne 24 hours' notice to forward the papers and the 10% deposit to the firm. On receipt of this Hilborne released the papers and the 10% deposit to the firm and in their letter of the same date 26 July 1989 Hilborne mentioned that in view of the stand taken by the firm they were forwarding the relevant papers to them on the undertaking to protect their lien on costs. But Hilborne claimed in the letter that the firm could not part with the proceeds of sale without first obtaining the plaintiff's written consent.

On 27 July 1989 the firm wrote to Hilborne denying that the firm would have to seek the plaintiff's consent before releasing the proceeds of sale, as any proceeds of sale coming into their hands would be received by them as solicitors for the first defendant. In any event, the firm pointed out that Hilborne themselves had written to Shook Lin & Bok, the purchaser's solicitors, requesting that the cashier's orders for the 90% balance of the purchase price amounting to $252,620.72 be made in favour of the first defendant. On being instructed by the first defendant the firm did nothing more than to reaffirm the directions given to Shook Lin & Bok by Hilborne.

The sale was finally completed on 28 July 1989 and the balance of the purchase price amounting to $252,620.72 was paid by the purchaser directly to the first defendant by way of two cashier's orders made in favour of the first defendant as originally instructed by Hilborne on 17 July 1989.

On 28 July 1989, 1 August 1989 and 14 August 1989 Hilborne wrote to the firm enquiring about the whereabouts of the proceeds of sale, and requesting that the firm take out an interpleader summons, as otherwise Hilborne would apply for a declaratory order against the firm as constructive trustee for the plaintiff. As Hilborne's request was not accepted by the firm, the plaintiff issued a writ on 31 August 1989 against all the defendants, claiming as against the first defendant a declaration that the property was at all material times held by the first defendant in trust for the plaintiff absolutely, and that the plaintiff was entitled to the proceeds of sale; and as against the second to fifth defendants a declaration that they were constructive trustees for and on behalf of the plaintiff in respect of the property and consequently constructive trustees of the proceeds of sale, and therefore as such constructive trustees were jointly and severally accountable to the plaintiff in respect of the proceeds of sale.

On 30 October 1989 on the application of the second to fifth defendants, the senior assistant registrar ordered that the writ of summons and the statement of claim in respect of the second to fifth defendants be struck out on the ground that the proceedings were vexatious or alternatively that they were otherwise an abuse of the process of the court. The plaintiff appealed to the judge-in-chambers against the order.

At the hearing of the appeal before me, the plaintiff's counsel contended that the firm had been informed by the plaintiff that it was he who had paid the original purchase price for the property when it was purchased in 1982. The firm were therefore aware that there was a dispute of sufficient gravity over the beneficial ownership of the property, to the extent that in their first letter of 24 July 1989 faxed to Hilborne at 10.32am they had agreed to hold the proceeds of sale as stakeholders *'pending the resolution of the rights of the respective parties'*, but had then reversed their position at 3.13pm after taking the instructions of their client. The plaintiff's counsel queried whether the firm as potential constructive trustees were entitled to allow the first defendant's instructions to supersede their own decision. In any case, the plaintiff's counsel contended, the firm had not shown that the plaintiff's claim was vexatious or an abuse of process, since they had not questioned the plaintiff's good faith in their affidavits, and therefore the fundamental ingredient for the success of their application was missing: *Jowitt, Words and Phrases*. The plaintiff's counsel acknowledged that the law regarding the liability of a stranger who becomes involved in the periphery of a breach of trust remains the subject of controversy. In this case, however, he contended that it was a case of *'knowing assistance'* by a stranger to a trustee, as explained by Peter Gibson J in *Baden* v *Societe General du Commerce SA*,[1] accepted by Megarry VC in *Re Montagu's Settlement Trusts*,[2] and considered by the Court of Appeal in *Lipkin Gorman* v *Karpnale*.[3] This question cannot be

dealt with summarily under O 18 r 19. The court should therefore not entertain such an application which involves prolonged and serious argument: *Williams & Humbert Ltd* v *W & H Trade Marks (Jersey) Ltd*;[4] *Frogmore Estate plc* v *Berger*.[5]

Counsel for the second to fifth defendants contended that the first question is whether there could have been a trust over the property. Under the circumstances at the time of its original purchase in 1982, there could only have been two possibilities: either the property was a gift by the plaintiff to the first defendant, with whom he had been cohabiting for many years, and by whom he had a son, in which case that would have been the end of the plaintiff's claim, even for the first defendant; or the property was to be held by the first defendant in trust for the plaintiff. It might well be that the plaintiff can establish that the property was held by the first defendant in trust for him, but that would be a separate matter, to be decided between the plaintiff and the first defendant. Even so, in the present sale, the firm were merely solicitors, acting for the first defendant within the scope of their authority to complete the sale and hand over the proceeds of sale to the first defendant. Solicitors, when acting for trustees, are answerable only to the trustees who employ them and not to the beneficiaries: *Cordery on Solicitors* (6th Ed) at p 155. The firm would only be accountable to the first defendant as the trustee and not to the cestui que trust. The contention by the plaintiff's counsel that the firm knew, or should have known, that the plaintiff paid almost the whole of the purchase price of the property when it was originally purchased in 1982, and that this knowledge would have made them constructive trustees of the property for the beneficiary was not sustainable. Even if this were so, the knowledge by itself could not have made the firm liable to the plaintiff as constructive trustees of the property or of the proceeds of sale, unless they were cognisant of a dishonest design on the part of the first defendant as trustee: *Barnes* v *Addy*;[6] *Williams* v *Williams*.[7]

In *Carl Zeiss Stiftung* v *Herbert Smith & Co (No 2)*[8] the East German foundation of Carl Zeiss, claimed all the assets and property of a defendant, the West German foundation of the same name. Before the trial of the main action, the plaintiff's brought proceedings for an account against the West German foundation's solicitors alleging that they had received money from their clients and, by reason of so acting, they knew all the facts and matters averred and proved or to be proved in the main action and they had notice that their clients' money belonged to the plaintiffs. The plaintiffs made no allegation against the defendant solicitors' integrity and honesty and at all times emphasized that no such allegation could or was being made. The defendant solicitors admitted receiving moneys from the West German foundation on account of fees, costs and disbursements incurred or to be incurred in the main action and that they knew from time to time the averments made by the plaintiffs. On the hearing of a preliminary issue as to whether the statement of claim disclosed a cause of action, Pennycuick J held that the nature of the plaintiff's action was such that it obstructed the course of justice and was thus contrary to public policy; he made a declaration that, irrespective of the decision in the main action, the defendant solicitors would not be accountable to the plaintiffs for any fees, costs or disbursements received from their clients so long as they acted honestly as solicitors and received those moneys in their capacity of solicitors, and he dismissed the action. On appeal by the plaintiffs, the Court of Appeal held that a solicitor acting honestly in his capacity as a solicitor for his client was in no different position from any other agent acting for his principal and was not to be imputed with any knowledge of a trust merely because, in acting for his client, he knew that it was claimed against his client that there was a trust, and such knowledge could not be notice of a trust or notice of misapplication of trust funds. Sachs LJ in giving reasons for his decision said at p 297:

> In the present case, the defendants were thus not under a duty to the plaintiff to enquire into the allegations of fact in the statement of claim. As to the law, they were similarly under no duty to the plaintiff in such a complex matter either to make enquiries or to attempt to assess the result.

In my judgment, the firm in the present case were acting solely for their client the first defendant in the transaction. They were taking instructions from her, and were responsible solely to her. Their searches had confirmed that their client was the registered owner of the property, and it was not for them to query her right to it, much less take my steps to call in question that right. This was illustrated by their second letter faxed to Hilborne at 3.13pm on the afternoon of 24 July 1989 after they had taken the first defendant's instructions, and had corrected the offer in their earlier letter faxed to Hilborne that morning at 10.32am to hold the proceeds of sale as stakeholders. In that second letter, they had made it clear that they could not and would not hold the proceeds of sale as stakeholders, and would pay the proceeds to their client. The 10% deposit of $28,000 and the papers of the sale were only forwarded to them by Hilborne after that, on 26 July 1989. The 90% balance of the purchase price was in fact paid direct to the first defendant on completion, pursuant to the plaintiff's letter of authority of 17 July 1989. The firm had at no time acted for the plaintiff, and there was no evidence whatsoever of any situation or any series of events or any steps taken by them from which it could be inferred that the firm had become constructive trustees for and on behalf of the plaintiff.

As to the procedure used to strike out the plaintiff's writ and statement of claim, the application was not made on the ground that there was no reasonable cause of action (ground (a)) because no evidence would have been admissible on an application under that ground. The second to fifth defendants applied under O 18 r 19(1) on the ground that the proceedings were vexatious (ground (b)) or, alternatively, were otherwise an abuse of the process of the court (ground (d)). A proceeding is said to be vexatious when the party bringing it is not acting bona fide, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result: *Jowitt's Dictionary of English Law*. Abuse of the process of the court is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive: *Words & Phrases Judicially Defined*. The plaintiff's action against the second to fifth defendants was clearly unsustainable, and the plaintiff could not possibly hope to achieve any practical result. Neither was the action instituted in good faith, as the plaintiff's solicitors must have known that the second to fifth defendants had no choice but to hand over the 10% deposit of $28,000 and the cashier's orders to their client, the first defendant. In my opinion, the plaintiff's action in joining the second to fifth defendants was meant to embarrass them, and that being so, an order to strike out under O 18 r 19 was properly made, to obviate the need for a full trial. I would therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Ng Thin Wah & Partners; Goh Poh & Partners.*

Reported by *Liu Hern Kuan*

Herbs and Spices Trading Post Pte Ltd v Deo Silver (Pte) Ltd

HIGH COURT (SINGAPORE) — DISTRICT COURT APPEAL NO 83 OF 1989
CHAN SEK KEONG J
11 DECEMBER 1990

Civil Procedure — Appeal — Right of appeal from decision of district judge — Power and jurisdiction of registrar of subordinate courts — Rules of the Subordinate Courts 1986, O 32 & O 55 — Subordinate Courts Act (Cap 321, 1985 Ed), ss 47 & 69 — Supreme Court of Judicature Act (Cap 322, 1985 Ed), ss 21 & 34

The appellants appealed against the decision of the district judge who allowed an appeal against the decision of the deputy registrar striking out the amended defence and counterclaim. The respondents took a preliminary objection to the appeal on the ground that the decision of the district judge under O 55 of the Rules of the Subordinate Courts 1986 ('the Rules') was final.

Held, dismissing the preliminary objection:

(1) It was settled law that a rule making power regulates procedure and does not confer jurisdiction or power where there is none. The Rules Committee could not therefore, by exercising s 69 of the Subordinate Courts Act, make the registrar's decisions unappealable in any circumstances.

(2) The jurisdiction and powers exercised by the registrar are those conferred on the district court and exercisable by the registrar. By virtue of s 21 of the Supreme Court of Judicature Act the decisions of the district court and therefore the registrar may be appealed to the High Court.

(3) The district court has no appellate jurisdiction. Order 55 merely gives effect to the internal organization of judicial work whereby the Senior District Judge permits the registrar to exercise the jurisdiction and powers of the district court and reserves to the district judge the power to hear 'appeals' from the registrar.

(4) The nature of the jurisdiction of the district judge in hearing appeals from the registrar under O 55 was analogous to appeals from the decisions of the registrar of the High Court to the judge-in-chambers. It was by way of a rehearing and the matter was to be treated afresh.

Case referred to

1 *Goh Siam Yong* v *Zacharia Norman Augustine & Anor* [1989] 3 MLJ 406 (refd)

Legislation referred to

Subordinate Courts Act (Cap 321, 1985 Ed) ss 34, 47, 69
Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 21
Subordinate Courts Rules 1986 O 18, O 32, O 55

Steven Ang for the appellants.
Peter Yap for the respondents.

Cur Adv Vult

Chan Sek Keong J: This was an appeal by the plaintiffs/appellants against the decision of the district judge allowing an appeal against the decision of the deputy registrar striking out the amended defence and counterclaim under O18 r 18(1) of the Subordinate Court Rules 1986. I allowed the appeal in part.